IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.959/2005

Reserved on.26.9.2007

Decided on.25.10.2007

State of H.P. & another. **…Petitioners.**

Versus

Ram Chander. **…Respondent**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]*.no*

For the petitioner : **Mr. M.S. Chandel, Advocate General with Ms. Meenakshi Sharma, Deputy Advocate General.**

For the respondent **Mr. Lovneesh Kanwar, Advocate.**

Rajiv Sharma, J.

A challenge has been laid to the award passed by the Labour Court-cum-Industrial Tribunal, Dharamshala dated 30th April, 2005 in reference No. 141/2002.

The State Government has made the following reference to the Labour Court-cum-Industrial Tribunal, Dharamshala:

> **"Whether the termination of services of the workman Ram Chander by the employer, Executive Engineer, Electrical Division, HPPWD, Mandi w.e.f. 1.4.2001 without complying the provisions of Section 25-F of the Industrial Disputes Act, 1947 is justified? If not, to what relief of service benefits and amount of compensation the workman is entitled to?**

In sequel to the reference made by the State Government, the respondent (hereinafter referred to as the workman for convenience sake)

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? no

had filed his statement of claim. The workman had primarily contended before the Labour Court that he had completed 240 days preceding his retrenchment i.e. 1st April, 2001 and has been disengaged without complying with the mandatory provisions of the Industrial Disputes Act, 1947. The employer had filed reply to the statement of claim and had refuted the averments contained in the statement of claim. The Labour Court on the basis of the evidence led by the parties had answered the reference in affirmative on 30th April, 2005.

The learned Advocate General had strenuously argued that the award passed by the Labour Court dated 30th April, 2005 is not sustainable in the eyes of law more particularly when the workman had not completed 240 days preceding the block of 12 months on the date of his retrenchment i.e. 1st April, 2001.

Mr. Lovneesh Kanwar, Advocate appearing on behalf of the workman had supported the award dated 30th April, 2005 passed by the Labour Court.

I have heard the learned counsel for the parties and perused the record.

The workman was engaged in Electrical Sub Division, Mandi, Section Jogindernagar as daily wage Beldar upto 1st March, 2001. It is evident from the man-days chart annexed by the employer that the workman in fact had completed 232 days. It is also evident from the man-days chart that the workman has been given fictional breaks in the month of April, 2000, August, 2000, November, 2000 as well as February, 2001. While calculating the days, the employer had not taken into consideration that the Sundays and national holidays were to be included while calculating 240 days in a block of 12 calendar months preceding his

retrenchment. If the national holidays and Sundays are included in the man-days chart, the workman had completed more than 240 days.

In a case ***Mahendra versus Presiding Officer, Labour Court, Dehradun and another*** reported in 2005 LLR 109, the Uttaranchal High Court has held as under:

> **"From the above findings it is clear that the Labour Court has specifically recorded the findings that the petitioner has worked for 203 days in twelve preceding months from the date of his termination but it has erred in not calculating 52 Sundays and 17 other holidays while calculating the total number of days of his continuous service and had it been so the number of days of continuous service of the petitioner-workman would have definitely been more than 240 days."**

The finding recorded by the Labour Court on the basis of the statement of RW-1 Sh. R.K. Arora coupled with the statement of the workman i.e. PW-1 to the effect that the workman had completed 240 days cannot be faulted with. Sh. R.K. Arora had admitted while appearing as RW-1 that the workman was given breaks in the month of July, 1998, August, 1998, March, 1999, June, 1999, October, 1999, December, 1999. In the year 2000 the workman was also given breaks in the months of April, August, November and in the year 2001 in the month of February. Mr. R.K. Arora has testified that the breaks were given to the workman since no work was available. Meaning thereby that there was cessation of work and the workman cannot be put to disadvantage on that ground. The period when there was cessation of work is to be counted for continuous service under section 25-B of the Industrial Disputes Act, 1947. The Labour Court had rightly concluded that since the workman had completed 240 days in a block of 12 months preceding his retrenchment, he was entitled for the protection of section 25-F of the Industrial Disputes Act, 1947. Though the learned Advocate General had

argued that the workman was issued with a notice, but the notice was issued to the workman on 4.1.2002 whereas the workman had been retrenched from service on 31st March, 2001. It is also clear from the man-days chart that the workman was not engaged even for a single day after 1st April, 2001. The notice was required to be issued as per the requirement of law at the time of retrenchment and the workman was also entitled to the retrenchment compensation on the basis of length of service.

Accordingly, there is no merit in the writ petition and the same is dismissed and the award dated 30th April, 2005 is upheld. There shall be no order as to costs.

(Rajiv Sharma), Judge

October, 25, 2007
Awasthi